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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARIN and EDWARD MILLIGAN,  
California residents, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., a  
California corporation; and TOYOTA  
MOTOR CORPORATION, a foreign  
corporation,

Defendants.

NO. C09-05418 RS

**PROPOSED ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
APPROVAL OF FORM OF NOTICE,  
AND PRELIMINARY  
CERTIFICATION OF SETTLEMENT  
CLASS AS MODIFIED BY THE  
COURT AT SECTION (9)**

Date: May 5, 2011  
Time: 1:30 p.m.  
Place: Courtroom 3, 17<sup>th</sup> Floor  
Before: Hon. Richard Seeborg

CLASS ACTION

WHEREAS, Plaintiffs Carin Milligan, Ed Milligan, Damashata Washington

("Plaintiffs"), and Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") have entered into a

~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT, APPROVAL OF FORM OF  
NOTICE, AND PRELIMINARY CERTIFICATION OF  
SETTLEMENT CLASS - 1

CASE No. C09-05418 RS

78016 v1

82070 v2

1 Settlement Agreement dated March 18, 2011 (the "Agreement") in the above-captioned matter  
2 (the "Action");

3 WHEREAS, the Agreement sets forth the terms and conditions of a proposed class  
4 action settlement and dismissal with prejudice of this action (the "Settlement"), and the parties  
5 have requested preliminary approval of the Settlement set forth therein;  
6

7 WHEREAS, having reviewed the Agreement and its exhibits and the pleadings and  
8 other papers on file in this action, the Court finds that preliminary approval of the Agreement  
9 and proposed Settlement should be granted, and all defined terms in this Order shall have the  
10 same meaning assigned to them in the Agreement;

11 NOW, after review of the Agreement, and the matter having come before the Court by  
12 hearing on May 5, 2011; and the Plaintiffs having appeared by Karl Olson and Jeffrey B.  
13 Cereghino of the law firm of Ram, Olson, Cereghino & Kopczynski LLP; Steven M. Tindall of  
14 the law firm of Rukin Hyland Doria & Tindall; and Jessica Moy of the law firm of Andrus  
15 Anderson LLP; and Toyota having appeared by Frank C. Rothrock and Eva M. Weiler of the  
16 law firm of Shook, Hardy & Bacon LLP, on application of the Parties and based on the record;  
17

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

19 (1) The Court grants preliminary approval of the Agreement and proposed  
20 Settlement set forth therein and all terms used herein shall have the same meaning as set forth  
21 in the Agreement.  
22

23 (2) Staying the Action. All discovery and other pretrial proceedings in this Action  
24 are hereby stayed and suspended until further order of the Court.  
25

1           (3)     Jurisdiction. Pending resolution of the settlement proceedings in this matter,  
2 the Court hereby asserts jurisdiction over the members of the Settlement Class for purposes of  
3 effectuating this Settlement and releasing their claims.  
4

5           (4)     Class Certification for Settlement Purposes Only. The Court preliminarily finds  
6 that the proposed Settlement Class meets all of the applicable requirements under Rules 23(a)  
7 and 23(b)(3) of the Federal Rules of Civil Procedure, and for the purposes of the Settlement  
8 only, the Court conditionally certifies the following Settlement Class:

9                     All persons in the United States, including the Commonwealth of  
10                    Puerto Rico, who currently own or lease or who previously owned  
11                    or leased a model-year 2001-2003 Toyota RAV4 vehicle with  
12                    automatic transmissions ("Class Vehicle"). Excluded from the  
13                    Settlement Class are the following: a) officers and directors of  
14                    Toyota (as defined below) b) the Judge to whom this case is  
                      assigned and any member of the Judge's immediate family; and c)  
                      persons who have submitted a timely and valid request for  
                      exclusion from the Settlement Class.

15           The Court directs that, for the sole purpose of settlement, and without an adjudication  
16 on the merits, the Action shall proceed as a class action on behalf of the Settlement Class.

17           (a)     Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the  
18 purposes of settlement only, the Court finds that the Settlement Class identified by this Order is  
19 ascertainable, that the size of the Settlement Class is numerous, and that it would be  
20 impracticable to join all Settlement Class Members as individual parties.  
21

22           (b)     Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the  
23 purposes of settlement only, the Court finds that the claims of the Plaintiffs are typical of the  
24 claims of the members of the Settlement Class. Plaintiffs allege harm for the same alleged  
25

1 wrongs, and the same alleged harm appears to apply to members of the Settlement Class. The  
2 Court also finds for the purposes of settlement only, that certification of the Settlement Class is  
3 the superior method for resolving the disputes between the Parties. The Court further finds, for  
4 the purposes of settlement only, that members of the Settlement Class will benefit from the  
5 relief obtained in the proposed Settlement.  
6

7 (c) Should the settlement not be finally approved or implemented for any  
8 reason or should the Agreement be terminated as provided therein, the Settlement Class shall  
9 be deemed decertified and entry of this Order shall not prejudice the rights of Defendants to  
10 oppose certification of this action pursuant to Fed. R. Civ. 23.  
11

12 (5) Class Representatives and Co-Lead Class Counsel. Carin Milligan, Edwin  
13 Milligan, and Damashata Washington are designated as Class Representatives for the purpose  
14 of seeking approval of the settlement of the Action. Michael F. Ram and Jeffrey B. Cereghino  
15 of the law firm of Ram, Olson, Cereghino & Kopczynski LLP; Beth Terrell of the law firm of  
16 Terrell Marshall Daudt & Willie PLLC; Steven M. Tindall of the law firm of Rukin Hyland  
17 Doria & Tindall; and Jennie Lee Anderson of the law firm of Andrus Anderson LLP are hereby  
18 designated as Co-Lead Class Counsel for the Class.  
19

20 (6) Granting Preliminary Approval. The Settlement Agreement is preliminarily  
21 approved as fair, reasonable and in the best interests of the Settlement Class, subject to the right  
22 of any Settlement Class Member to challenge the Settlement Agreement and to show cause, if  
23 any exists, why a Final Order and Judgment dismissing this Action (based on the Settlement  
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1 Agreement) should not be entered after due and adequate notice to the Settlement Class and a  
2 Fairness Hearing as ordered herein.

3 (7) Findings Regarding Proposed Settlement. The Court finds that: (i) the proposed  
4 settlement resulted from extensive arm's-length negotiation; and, (ii) the proposed settlement  
5 evidenced by the Settlement Agreement is sufficient to warrant (a) notice thereof to the  
6 members of the Class and (b) a full hearing on the settlement.

7  
8 (8) Fairness Hearing. A hearing (the "Fairness Hearing") will be held on December  
9 1, 2011, at 1:30 p.m. in Courtroom 3 of the United States District Court for the Northern  
10 District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, to  
11 determine: (i) whether the Action should be finally certified for class action settlement  
12 purposes; (ii) whether the Settlement of the Action should be approved as fair, reasonable and  
13 adequate; (iii) whether the Action should be dismissed with prejudice pursuant to the terms of  
14 the Agreement; (iv) whether Settlement Class Members should be bound by the Release set  
15 forth in the Agreement; (v) whether Settlement Class Members should be subject to a  
16 Permanent Injunction that, among other things, bars Settlement Class Members from filing,  
17 commencing, prosecuting, intervening in, or participating as class members in, any lawsuit in  
18 any jurisdiction based on or relating to the claims and causes of action, or the facts and  
19 circumstances related thereto, in this Action; (vi) whether the application for incentive awards  
20 for the named Plaintiffs should be approved; and (vii) whether the application of Class Counsel  
21 for an award of Attorneys' Fees and expenses should be approved. The Parties' initial  
22 submissions in support of the Settlement shall be filed with the Court no later than 86 days  
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1 prior to the Fairness Hearing or September 6, 2011. The Parties' Responses, if any, to any  
2 objections or appearances filed pursuant to Paragraph 14 of this Order shall be filed with the  
3 Court no later than 14 days prior to the Fairness Hearing or November 17, 2011.

4  
5 (9) Pre-Hearing Notices.

6 (a) Notice by Direct Mail. Notice substantially in the form filed with this  
7 Court as Exhibit 1 hereto (the "Class Notice"), including the modifications listed in subsection  
8 9(e), shall be mailed, at the Defendants' expense, by First-Class U.S. Mail, postage prepaid, to  
9 the last known address of each member of the Class, and, in addition to Exhibit 1, a Spanish-  
10 language version of the Class Notice, a copy of which is attached as Exhibit 2, will also be sent  
11 to those Class members residing in Puerto Rico. The mailing list for the Notice shall be  
12 compiled from information that includes information provided by R.L. Polk & Co., and shall  
13 include all identifiable current and prior owners and lessees of the Class Vehicles in the United  
14 States, including the Commonwealth of Puerto Rico. Notice shall be mailed within thirty (30)  
15 days after receipt of the final mailing list information regarding current and prior owners and  
16 lessees of the Class Vehicles from R.L. Polk & Co.

17  
18 (b) Remailing and Additional Notice. If any Notice is returned along with  
19 an advisory identifying a forwarding address, the Settlement Administrator shall cause the  
20 Notice to be placed in First-Class U.S. Mail, postage paid, directed to the forwarding address.

21  
22 (c) Proof of Mailing. At or before the Fairness Hearing, the Defendants or  
23 the Settlement Administrator shall file with the Court a proof of mailing of the Class Notice.

1 (d) CAFA Notice. The Court finds that service of this Agreement together  
2 with the materials specified in 28 U.S.C. § 1715(b) upon the entities and individuals listed in  
3 Exhibit 3 no later than ten (10) days after the Agreement was filed with the Court, shall  
4 constitute sufficient notice to the appropriate federal and state officials pursuant to the Class  
5 Action Fairness Act (“CAFA”), 28 U.S.C. § 1715.  
6

7 (e) Additions to the Class Notice. Class Counsel’s motion for attorneys’ fees  
8 shall be included on the website established by the Settlement Administrator. The following  
9 statement shall be added at the end of Section 14 of the Class Notice: “A copy of Class  
10 Counsel’s petition for an award of attorneys’ fees and expenses and request for incentive  
11 awards to Class Representatives will be available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) as of September 7,  
12 2011.” Additionally, the first sentence in Section 15 of the Class Notice shall be modified to  
13 read: “If you are a Class Member, you can object to the settlement or petition for attorneys’  
14 fees if you don’t like any part of them.”  
15

16 (10) Findings Concerning Notice. Having considered, among other factors: (i) the  
17 various methods by which notice to members of the Settlement Class might be given; (ii) the  
18 stake of each member of the Settlement Class; and (iii) whether significant numbers of  
19 Settlement Class Members might desire to exclude themselves from the Settlement Class or  
20 appear individually, the Court finds that notice given in the form and manner provided in  
21 paragraph 9 of this Order is the best practicable notice and is reasonably calculated, under the  
22 circumstances, to apprise members of the Class of: (a) of the pendency of this Action; (b) the  
23 terms of the Settlement; (c) the binding effect of any judgment approving the Settlement on  
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1 those who do not exclude themselves from the Settlement Class; (d) the manner in which Class  
2 Counsel will be compensated; (e) the manner in which any additional compensation will be  
3 provided to named Plaintiffs; (f) of their right to exclude themselves from the proposed  
4 settlement; (g) that any judgment, whether favorable or not, will include all Settlement Class  
5 Members who have not been excluded; and (h) that any Settlement Class Member who has not  
6 been excluded may object to the settlement and, if he or she desires, enter an appearance either  
7 personally or through counsel. The Court further notes that the Class Notice provided in the  
8 Agreement is written in simple English and is readily understandable by members of the  
9 Settlement Class. In sum, the Court finds that such notice is reasonable, that it constitutes due,  
10 adequate and sufficient notice to all persons entitled to be provided with notice, and that it  
11 meets the requirements of due process, the Federal Rules of Civil Procedure and the Rules of  
12 the Court.  
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15 (11) Communications with Class Members. Toyota is authorized to communicate  
16 with members of the Settlement Class about the Action and the terms of the proposed  
17 Settlement provided for in the Agreement, and to engage in any other communication within  
18 the normal course of its business.  
19

20 (12) Retention of Administrators. The Court authorizes Toyota, in consultation with  
21 Co-Lead Class Counsel, to retain Kurtzman Carson Consultants (formerly Rosenthal &  
22 Company LLC), Class Action Settlement Administrators, 75 Rowland Way, Suite 250, Novato,  
23 California, 94945, to help implement the terms of the proposed settlement as Administrators,  
24 and authorizes the Administrators to assist the Defendants in (i) mailing the Class Notice, and  
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1 (ii) carrying out such other responsibilities as are provided for in the Agreement or may be  
2 agreed to by the Parties in the Action.

3 (13) Exclusion from Class.

4 (a) Requests for Exclusion. Any member of the conditional Settlement Class  
5 who wishes to be excluded from the Class must send a written request for exclusion to the  
6 Administrator by first-class mail, postage prepaid, to the following address: Toyota RAV4  
7 ECM Settlement Claims Administrator, P.O. Box 6177, Novato, California, 94948-6177.  
8

9 Any request for exclusion from the Class Settlement must be postmarked on or before  
10 the deadline specified in the Notice, which shall be no less than forty-five (45) days after the  
11 mailing of the Notice. Any such exclusion request shall: (i) set forth the Class Member's full  
12 name and current address; (ii) identify the model year and model of his/her Class Vehicle(s)  
13 and the approximate date of purchase; (iii) state whether the Settlement Class member  
14 requesting exclusion still owns or leases the Class Vehicle; and (iv) specifically state his/her  
15 desire to be excluded from the Settlement Class. Any current owner or lessee of a Class  
16 Vehicle who submits a request for exclusion must also provide the vehicle identification  
17 number of the Class Vehicle with that request.  
18

19 If the proposed Settlement is approved, any member of the Settlement Class who has  
20 neither submitted an appropriate, timely, written request for exclusion from the Settlement  
21 Class, nor has been excluded pursuant to paragraph 13(b) below, shall be bound by all  
22 subsequent proceedings, orders and judgments in this Action, even if he, she or it has pending  
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1 or subsequently initiates litigation encompassed by the Settlement Class Members' Release  
2 against the Defendants relating to the claims released in the Agreement.

3 (b) Class Members Involved in Bankruptcy Proceedings. If, on or before the  
4 Final Settlement Date, any Settlement Class Member is a debtor subject to a pending  
5 bankruptcy proceeding with respect to such Class Member under the federal bankruptcy laws (a  
6 "Bankruptcy Proceeding"), such Settlement Class Member shall be excluded from the  
7 Settlement Class and neither the Settlement Agreement nor the Final Order and Judgment  
8 (including, without limitation, the Release and the relief provided therein) shall have any effect  
9 with respect to the Settlement Class Member, unless on or before the Final Settlement Date: (i)  
10 a final order and judgment approving and incorporating the terms of the Settlement Agreement  
11 as to such Settlement Class Member (in its entirety and without qualification or conditions that  
12 affect Toyota's rights thereunder), or such other final order and judgment that the Parties agree  
13 to, has been entered by the federal court having jurisdiction over such Bankruptcy Proceeding;  
14 and (ii) the Settlement Class Member files such an order with this Court and delivers to Class  
15 Counsel and Toyota's Counsel copies of the same at the addresses set forth in paragraph 14(a)  
16 below.

17 (14) Objections and Appearances.

18 (a) Written Objections. Any Settlement Class Member who wishes to object  
19 to the Class Settlement must send a written objection ("Objection") to the Settlement  
20 Administrator at Toyota RAV4 ECM Settlement Claims Administrator, P.O. Box 6177,  
21 Novato, California, 94948-6177 by First-Class U.S. Mail, postage paid. All objections must  
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1 also be served on Class Counsel and on counsel for Toyota. Any objection must be postmarked  
2 on or before the deadline specified in the Notice, which shall be forty-five (45) days after  
3 mailing of the Notice. Only Settlement Class members may object to the Class Settlement.  
4 The Settlement Administrator shall be responsible for forwarding all Objections to counsel for  
5 Toyota and Class Counsel. Class Counsel will file all timely and valid Objections with the  
6 Court.  
7

8 (b) In his/her objection, an objecting Settlement Class member must: (i) set  
9 forth his/her full name, current address, and telephone number; (ii) identify the model year of  
10 his/her Class Vehicle(s), as well as the vehicle identification number of his/her Class  
11 Vehicle(s); (iii) state whether he/she is a current or prior owner or lessee; (iv) state when he/she  
12 purchased the Class Vehicle(s); (v) set forth a statement of the position the objector wishes to  
13 assert, including the factual and legal grounds for the position; and (vi) provide copies of any  
14 other documents that the objector wishes to submit in support of his/her position.  
15

16 (c) Any Settlement Class member who does not submit an objection in  
17 complete accordance with this paragraph and the provisions specified in the Notice shall not be  
18 permitted to object to the Class Settlement.  
19

20 (d) Subject to approval of the Court, any objecting Settlement Class member  
21 may appear at any hearing on the Final Approval Order and Judgment ("Fairness Hearing")  
22 held by the Court, in person or through counsel, to show cause why the proposed Class  
23 Settlement should not be approved as fair, adequate, and reasonable, or to object to any  
24 petitions for attorneys' fees, Representative Class Plaintiff incentive fees, and reimbursement  
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1 of litigation costs and expenses. The objecting Settlement Class member must file with the  
2 Clerk of the Court and serve upon counsel designated in paragraph 33 below, a notice of  
3 intention to appear at the Fairness Hearing (“Notice of Intention to Appear”) by the deadline  
4 specified in the Notice, which shall be forty-five (45) days after the mailing of the Notice  
5 pursuant to this Agreement. The Notice of Intention to Appear must include copies of any  
6 papers, exhibits, or other evidence that the objecting Settlement Class member (or his/her  
7 counsel) will present to the Court in connection with the Fairness Hearing. Any Settlement  
8 Class member who does not provide a Notice of Intention to Appear in complete accordance  
9 with the deadlines and other specifications set forth in the Notice, and who has not filed an  
10 Objection in complete accordance with the deadlines and other specifications set forth in this  
11 paragraph and the Notice, will, subject to the Court’s final determination in the exercise of its  
12 discretion, be barred from speaking or otherwise presenting any views at any fairness hearing.  
13  
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15 (15) Deadline for Petition for Attorneys’ Fees and Expenses. Class Counsel shall file  
16 with this Court their petition for an award of attorneys’ fees and reimbursement of expenses  
17 and request for incentive awards to the Class Representatives no later than September 6, 2011  
18 (86 days before the Fairness Hearing). Any objections or responses to the petition shall be filed  
19 no later than October 21, 2011 (41 days before the Fairness Hearing). Class Counsel may file a  
20 reply to any opposition to memorandum filed by any objector no later than November 17, 2011  
21 (14 days before the Fairness hearing).  
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1           (16) Appointment of Settlement Administrator. Kurtzman Carson Consultants, 75  
2 Rowland Way, Suite 250, Novato, California, 94945, is hereby appointed Settlement  
3 Administrator to carry out the duties set forth in this Order and the Settlement Agreement.  
4

5           (17) Service of Papers. Toyota's Counsel and Class Counsel shall serve on each  
6 other and on all other parties who have filed notices of appearance, at or before the Fairness  
7 Hearing, any further documents in support of the proposed Settlement, including responses to  
8 any papers filed by Settlement Class Members. Toyota's Counsel and Co-Lead Class Counsel  
9 shall promptly furnish to each other any and all objections or written requests for exclusion that  
10 may come into their possession and shall file such objections or requests for exclusion with the  
11 Court on or before the date of the Fairness Hearing. Class Counsel and Toyota's Counsel shall  
12 be prepared at the Fairness Hearing to respond to any objections filed by Settlement Class  
13 Members and to provide other information, as appropriate, bearing on whether or not the  
14 settlement should be approved by the Court.  
15

16           (18) Termination of Settlement. This Order shall become null and void, and shall be  
17 without prejudice to the rights of the Parties, all of whom shall be restored to their respective  
18 positions existing immediately before this Court entered this Order, if: (i) the proposed  
19 Settlement is not finally approved by the Court, or does not become final, pursuant to the terms  
20 of the Agreement; or (ii) the proposed Settlement is terminated in accordance with the  
21 Agreement or does not become effective as required by the terms of the Agreement for any  
22 other reason. In such event, the proposed Settlement shall become null and void and be of no  
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1 further force and effect, and neither the Agreement nor the Court's orders, including this Order,  
2 shall be used or referred to for any purpose whatsoever.

3 (19) Use of Order. This Order shall be of no force or effect if the Settlement does not  
4 become final, and shall not be construed or used as an admission, concession or declaration by  
5 or against Defendants or Plaintiffs or members of the Settlement Class of the validity of any  
6 claim or counterclaim or any actual or potential fault, wrongdoing or liability whatsoever, or by  
7 or against Plaintiffs, members of the Settlement Class or Defendants, that their claims or  
8 counterclaims lack merit or that the relief requested in the Third Amended Complaint or any  
9 counterclaims are inappropriate, improper, or unavailable, or as a waiver by any Party of any  
10 defense or claims it or they may have.

11 (20) Reservation of Rights. The Court reserves the right to approve the Agreement  
12 with such modifications as may be agreed by the Parties and without requiring further notice to  
13 the Class Members.

14 (21) Continuation of Hearing. The Court reserves the right to continue the Fairness  
15 Hearing without further written notice.

16 IT IS SO ORDERED.

17 Dated: \_5/17/11

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22 THE HONORABLE RICHARD SEEBORG  
23 U.S. DISTRICT COURT JUDGE  
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